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THE CASE

BETWEEN THE

PRESIDENTIAL CANDIDATES.

STATEMENT OF THE CONTROVERSIES

RESPECTING

THE PRESIDENTIAL VOTE

IN THE

States of Florida, Louisiana, Michigan, Missouri, New Jersey, Oregon, Rhode Island, South Carolina, Virginia and Vermont,

TOGETHER WITH

Verbatim Copies of the Statutes of said States under which the Controversies have arisen, and by which they are to be decided.

COMPILED BY A. W. HART, ATT'Y-AT-LAW.

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INTRODUCTION.

The following pages give a *verbatim* transcript of such portion of the statutes of Florida, Michigan, Missouri, New Jersey, Oregon, Rhode Island, South Carolina, Vermont and Virginia as have any importance in respect to the controversies which have arisen in those States concerning the presidential or electoral vote. An unbiased statement is prefixed to the statute of each of said States, giving briefly the origin or cause of the controversy.

Every intelligent citizen will, by this means, be enabled to judge for himself of the legality of the acts of Returning Boards, Vote-Canvassers, Electors, or Governor, as the case may be, and thus arrive at a satisfactory conclusion upon the vexed question, whether Hayes or Tilden has been duly elected.

ERRATA.

Page 8, last line, for "merely supplementary to" read "amendatory of."

Page 13, under "Oregon," strike out last two paragraphs and substitute:

Governor Grover held he could fill the vacancy, and caused a certificate to be given to one Cronin, a Democratic candidate for elector, who thereupon claimed the right to sit and vote with the electors duly elected, upon the ground that he had received the next highest number of votes after Watts. His claim was denied, and the vacancy filled by the electors. Cronin then appointed two others as electors with himself, and took measures to send their votes to Washington.

The question is whether the vacancy could be legally filled by the electors, or whether Governor Grover had authority to issue a certificate to Cronin instead.

FLORIDA.

The question in this State is chiefly whether the Board of State Canvassers are bound to canvass the vote as given on the face of the returns, or whether they have judicial powers, enabling them to reject the vote of a county or precinct. For example, in Manatee county the clerk resigned before election, and the Governor failed to appoint. An election was held notwithstanding, inspectors appointed, and the registration list of 1875 used. The inspectors made up the returns and sent them to the county Board of Canvassers. The vote of Manatee county was hence rejected for informality. (The vote was small, and mostly Democratic.) On Dec. 23d, the Supreme Court of the State ordered a mandamus to issue to the Board of State Canvassers, commanding them to canvass the vote on the face of the returns.

Laws of Florida. (1868).

Qualifications and Disabilities of Electors, and Registration.

"Section 7. It shall be the duty of the clerk of the circuit court in each county to prepare suitable books or lists, as hereinafter designated, for the registration of the names of the electors.

"Sec. 8. No person shall be entitled to vote at any election unless he shall have duly registered six days previous to the day of the election."

Conducting Elections.

"Section 9. The County Commissioners, or a majority of them, shall meet at the office of the clerk of the circuit court within thirty days preceding the day on which any election shall be held, and examine the list of registered electors, &c., &c. * * And the County Commissioners shall at the same meeting appoint a board of three discreet electors, to be inspectors of the election for each

place designated for voting within the county; and shall also at said meeting designate so many places for holding such election within the county as may be deemed necessary for the convenience of the electors; and shall cause three notices of such designation and appointment of inspectors to be posted conspicuously in the vicinity of each place so designated, twenty days before the election.

"SEC. 10. A complete copy of the list of the names of all persons duly registered as electors shall be furnished to the inspectors of elections at each poll or place of voting in the county before the hour appointed for opening the election. The clerk shall prepare and certify such copies, and furnish the same to the sheriff at least two days before the day of holding the election, and the sheriff shall cause one of such lists to be delivered to one of such inspectors before the time for opening the election.

"SEC. 11. In case of the death, absence, or refusal to act of any or all of the inspectors appointed by the County Commissioners, the electors present at the time appointed for opening the election may choose, *viva voce*, from the qualified electors, such a number as, together with the inspector or inspectors present, if any, will constitute a board of three, and the persons so chosen shall be authorized to act as inspectors at that election. The inspector shall, before opening the election, choose a clerk, who shall be a qualified elector, and said inspectors and clerk, previous to receiving any votes, shall each take and subscribe an oath or affirmation in writing that they will, &c." é *

Canuass by the Inspectors.

"SEC. 21. As soon as the polls of an election shall be finally closed, the inspectors shall proceed to canvass the votes cast, &c. &c. * *

"SEC. 23. The canvass being completed, duplicate certificates of the result shall be drawn up by the inspectors or

clerk, containing in words written at full length the name of each person voted for, for each office, the number of votes cast for each person for such office, which certificates shall be signed by the inspectors and clerk, and one of such certificates shall, by one of their number, be without delay delivered, securely sealed, to the clerk of the circuit court, and the other to the county judge of the county; and the poll list and oaths of the inspectors and clerks shall also be transmitted with the certificate to the clerk af the circuit court, to be filed in his office."

County Canvass.

"SEC. 24. On the sixth day after any election, or sooner if the returns shall have been received, it shall be the duty of the county judge and clerk of the circuit court to meet at the office of said clerk, and take to their assistance a justice of the peace of the county, (and in case of the absence, sickness, or other disability of the county judge or clerk, the sheriff shall act in his place,) and shall publicly proceed to canvass the votes given for the several officers and persons, as shown by the return on file in the office of such clerk or judge, and shall then make and sign duplicate certificates, containing in words and figures written at full length, the whole number of votes given for each office, the names of the persons for whom such votes were given for such office, and the number of votes given to each person for such office. Such certificate shall be recorded by the clerk in a book to be kept by him for that purpose, and one of such duplicates shall be immediately transmitted by mail to the Secretary of State, and the other to the Governor of the State."

"SEC. 27. The person who shall receive the highest number of votes cast for any office shall be elected to such office." (The remainder of this section relates to the case of a tie vote.)

Act Approved February 27, 1872.

Duties and Powers of the State Canvassers.

"Sec. 4. On the thirty-fifth day after the holding of any general or special election, for any State officer, member of the legislature, or Representative in Congress, or sooner, if the returns shall have been received from the several counties, wherein elections shall have been held, the Secretary of State, Attorney General, and the Comptroller of Public Accounts or any two of them, together with any other member of the cabinet who may be designated by them, shall meet at the office of the Secretary of State, and form a Board of State Canvassers, and proceed to canvass the returns of said election, and determine who shall have been elected to any such office or as such members as shown by the returns. If any such returns shall be shown or shall appear so irregular, false or fraudulent that the board shall be unable to determine the true vote for any such officer or member, they shall so certify, and shall not include such return in their determination and declaration, and the Secretary of State shall preserve and file in his office all such returns, together with such other documents and paper as may have been received by him or by said Board of Canvassers, The said board shall make and sign a certificate containing in words written at full length the whole number of votes for each office, the number of votes given for each person for each office, and for member of the legislature, and therein declare the result, which certificate shall be recorded in the office of the Secretary of State, in a book to be kept for that purpose; and the Secretary of State shall cause a certified copy of such certificate to be published once in one or more newspapers printed at the seat of government."

LOUISIANA.

The contest in this State is chiefly over the statutory power and authority of the Returning Board to reject the votes cast in certain parishes. The rejection was upon the ground of intimidation, riot, &c., having prevented a fair

vote in such parishes. The vote "actually cast" gave a majoity to the Tilden electors. Omitting the vote of the parishes where intimidation was claimed, the vote gave a majority to the Hayes electors.

There is also a minor question as to the legality of the Board, a vacancy existing in it not having been filled.

REVISED STATUTES OF LOUISIANA (1870.) LAW OF 1868.

"SECTION 54. The Governor, the Lieutenant Governor, the Secretary of State, and John Lynch and T. C. Anderson, or a majority of them, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning officers."

[Here follows the form of oath taken by them.]

"Within ten days after the closing of the election, said returning officers shall meet in New Orleans to canvass and compile the statements of votes made by the Supervisors of Registration, and make returns of the election to the Secretary of State. They shall continue in session until such returns have been completed. The Governor shall, at such meeting, open, in the presence of the said returning officers, the statements of the Supervisors of Registration; and the said returning officers shall, from said statements, canvass and compile the returns of the election in duplicate. One copy of such returns they shall file in the office of the Secretary of State, and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the names of the persons who have been duly and lawfully

elected. The returns of the elections thus made and promulgated shall be *prima facie* evidence in all courts of justice and before all civil officers, until set aside, after a contest, according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected. The Governor shall, within thirty days thereafter, issue commissions to all officers thus declared elected, who are required by law to be commissioned.

"SEC. 2829. The electors shall meet at the seat of government on the day appointed for their meeting by the act of Congress—the first Wednesday in December—and shall then and there proceed to execute the duties and services enjoined upon them by the Constitution of the United States in the manner therein prescribed.

"SEC. 2830. If any one or more of the electors chosen by the people shall fail, from any cause whatever, to attend at the appointed place at the hour of 4 p. m. of the day prescribed for their meeting, it shall be the duty of the other electors immediately to proceed by ballot to supply such vacancy or vacancies."

LAW OF 1872.

The object of this law is defined in the title. It has been suggested by the Democratic Committee (Messrs. Palmer, Trumbull *et al.*,) who lately visited Louisiana, that it may, perhaps, be regarded as repealing the law of 1868.

But the same committee state truly, that if such be the fact, then there is no law whatever in Louisiana authorizing an election for choice of electors for President and Vice-President, since the law of 1868 alone provides for such election. The committee make the suggestion only, and abstain from argument.

The generally received opinion is that the law of 1872 is merely supplementary to the law of 1868.

Title.

"To regulate the conduct and to maintain the freedom and purity of elections; to prescribe the mode of making returns thereof; to provide for the election of returning officers and defining their powers and duties; to prescribe the mode of entering on the rolls of the Senate and House of Representatives; and to enforce article one hundred and three of the Constitution.

"SECTION 2. *Be it further enacted, &c.*, That five persons to be elected by the Senate from all political parties shall be the returning officers for all the elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning officers."

[Here follows the form of oath taken by the returning officers.]

"Within ten days of the closing of the election said returning officers shall meet in New Orleans, to canvass and compile the statements of votes made by the commissioners of election, and make returns of the election to the Secretary of State. They shall continue in session until such returns have been compiled. The presiding officer shall, at such meeting, open in the presence of said returning officers the statements of the commissioners of election, and the said returning officers shall, from said statements, canvass and compile the returns of the election," &c.

[The remainder of this section is immaterial to either side of the case.]

"SEC. 3. *Be it further enacted, &c.*, That in such canvass and compilation the returning officers shall observe

the following order: They shall compile first the statements from all polls or voting places at which there shall have been a fair, free and peaceable registration and election. Whenever from any poll or voting place there shall be received the statement of any Supervisor of Registration or Commissioner of Election, in form as required by section twenty-six of this act, on affidavit of three or more citizens, of any riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, which prevented, or tended to prevent, a fair, free, and peaceable, vote of all qualified electors entitled to vote at such poll or voting place, such returning officers shall not canvass, count, or compile, the statement of votes from such poll or voting place until the statements from all other polls or voting places shall have been canvassed and compiled. The returning officers shall then proceed to investigate the statements of riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, at any such poll or voting place; and if, from the evidence of such statement, they shall be convinced that such riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, did not materially interfere with the purity and freedom of the election at such poll or voting place, or did not prevent a sufficient number of qualified voters thereat from registering or voting, to materially change the result of the election, then, and not otherwise, said returning officers shall canvass and compile the vote of such poll or voting place with those previously canvassed and compiled; but if said returning officers shall not be fully satisfied thereof, it shall be their duty to examine further testimony in regard thereto, and to this end they shall have power to send for persons and papers. If, after such examination, the said returning officers shall be convinced that said riot, tumult, acts of violence, intimidation, armed disturbance, bribery, or corrupt influences, did materially interfere with the purity

and freedom of the election at such poll or voting place, or did prevent a sufficient number of the qualified electors thereat from registering and voting, to materially change the result of the election, then the said returning officers shall not canvass or compile the statement of the votes of such poll or voting place, but shall exclude it from their returns; provided, that any person interested in said election, by reason of being a candidate for office, shall be allowed a hearing before said returning officers, upon making application within the time allowed for the forwarding of the returns of said election."

SEC. 71. *Be it further enacted, &c.*, That this act shall take effect from and after its passage, and all others on the subject of election laws be and the same are hereby repealed.

MICHIGAN.

COMPILED LAWS (1871).

Republican candidate for elector ineligible because an office holder. Vacancy filled by electors present on the day appointed.

"SECTION 84. The electors of President and Vice-President shall convene at the capital of the State on the first Wednesday of December; and if there shall be any vacancy in the office of elector, occasioned by death, refusal to act, neglect to attend by the hour of twelve o'clock at noon of that day, or on account of any two of such electors having received an equal and the same number of votes, the electors present shall proceed to fill such vacancy by ballot and plurality of votes; and when all the electors shall appear, or vacancies shall be filled, as above provided, they shall proceed to perform the duties of such electors, as required by the Constitution and laws of the United States.

MISSOURI.

C. H. Thornton, one of the Democratic electors failed to attend the meeting on the day appointed, and the other electors filled the vacancy. A protest was filed by Chas. E. Steipel, the Republican elector, against Gen. D. M. Frost acting as elector, because his political disabilities had not been removed. General Frost resigned, and Le Graye Atwood was appointed to fill the vacancy. Steipel demanded from the Governor a certificate of election, to fill the place of General Frost, which was refused.

MISSOURI STATUTES, (1872.)

"SECTION 22. The Governor shall, on or before the meeting of such electors, cause three lists of the names of such electors to be made and delivered to them, as required by act of Congress."

"SEC. 25. If the electors appointed under chapter three of the General Statutes, or any of them, shall fail to attend at the seat of government by the hour of two o'clock in the afternoon of the day appointed by act of Congress for their meeting, then the electors present may appoint other persons to act as electors in the place of those absent."

NEW JERSEY.

The question in this State is analogous to that raised in Oregon. When the electoral college met, the State Republican Executive Committee filed a protest against the eligibility of one Williamson, a Democratic candidate for elector, on the ground that he was a United States Commissioner. Williamson had met with the electoral college, when the protest was made, but at once resigned, and James Hay (Democrat) was nominated to fill the vacancy, against which the Republicans protested, alleging the act was not under the statute.

LAWS OF NEW JERSEY (1709—1868).

"*An Act to Regulate Elections.*" (1846.)

"SEC. 14. When any vacancy shall happen in the college of electors of this State, or when any elector shall fail to attend by the hour of three o'clock in the afternoon of the day fixed by the Congress of the United States for the meeting of the college of electors, at the place of holding such meeting, those of the said electors who shall be assembled at the said hour and place, shall immediately after that hour proceed to fill, by ballot and by a majority of votes, all such vacancies in the electoral college."

OREGON.

Watts, one of the persons voted for as a Republican elector was constitutionally ineligible, being the incumbent of "an office of trust and profit under the United States."

Governor Grover held there was a vacancy, and caused a certificate to be given to one Cronin, a Democratic candidate for elector, who thereupon claimed the right to sit and vote with the other electors, upon the ground that he had received the next highest number of votes after Watts. His claim was denied, and the vacancy filled by the other electors. Cronin then appointed two other electors with himself, and took measures to send their votes to Washington.

The question is, whether there was a vacancy, and if so, whether it could be legally filled by the other electors, or whether Governor Grover had authority to issue a certificate to Cronin instead.

GENERAL LAWS OF OREGON (1843—1872).

CHAPTER XIV, TITLE IX. *Of the Election of Presidential Electors.*

"SEC. 59. The electors of President and Vice-President shall convene at the seat of government on the first Wednesday of December next after their election, at the hour of twelve of the clock at noon of that day, and if there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend or otherwise, the electors present shall immediately proceed to fill, by *viva voce* and plurality of votes, such vacancy in the electoral college, and when all the electors shall appear, or the vacancies, if any, shall have been filled as above provided, such electors shall proceed to perform the duties required of them by the Constitution and laws of the United States.

"SEC. 60. The votes for the electors shall be given, received, returned, and canvassed as the same are given returned, and canvassed for members of Congress. The Secretary of State shall prepare two lists of the names of the electors elected, and affix the seal of the State to the same. Such lists shall be signed by the Governor and Secretary, and by the latter delivered to the college of electors at the hour of their meeting on such first Wednesday of December."

The clause, in last section (60), "as the same are given, returned, and canvassed for members of Congress," requires reference to be made to sec. 33 of the act of January, 11, 1854, which is as follows:

"The county clerk, immediately after making the abstract of the votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail to the Secretary of State, at the seat of government, and it shall be the duty of the Secretary of State, in presence of the

Governor, to proceed, within thirty days after the election, and sooner, if the returns be all received, to canvass the votes given for Secretary and Treasurer of State, justices of the supreme court, member of Congress, and district attorneys; and the Governor shall grant a certificate of election to the person having the highest number of votes for either of such offices, and shall also issue a proclamation declaring the election of such person."

RHODE ISLAND.

Case same as Michigan and Oregon. Ineligibility of an elector (Republican), and vacancy filled by electors present.

REVISED STATUTES OF RHODE ISALND (1857).

TITLE VII, CHAP. XXVIII.

"SEC. 7. If any electors, chosen as aforesaid, shall, after their said election, decline the said office, or be prevented by any cause from serving therein, the other electors, when met in Bristol in pursuance of this chapter, shall fill such vacancies, and shall file a certificate in the Secretary's office of the person or persons by them appointed."

SOUTH CAROLINA.

The Board of State Canvassers rejected the vote cast in the counties of Edgefield and Laurens, on the ground of intimidation, &c., which left a majority for Hayes. The question is, the legal power of the board to reject the returns of the counties named.

There is, likewise, a question whether the board were bound to obey the order of the supreme court of the State, to include the vote of those counties in their return, but Judge Bond has lately decided it in the negative.

Revised Statutes of South Carolina.

Of the Formation and Proceedings of the Board of State Canvassers.

Sec. 22. The Secretary of State, Comptroller General, Attorney General, State Auditor, State Treasurer, Adjutant and Inspector General, and the Chairman of the Committee on Privileges and Elections of the House of Representatives, shall constitute the State canvassers, four of whom shall be a sufficient number to form a board.

Sec. 23. If a majority of these officers shall be unable, or shall fail to attend, the President of the Senate, being notified by the Secretary of State, shall attend without delay, and, with the officers attending, shall form a board.

Sec. 24. The board, when thus formed, shall, upon the certified copies of the statements made by the board of county canvassers, proceed to make a statement of the whole number of votes given at such election for the various officers, and for each of them voted for, distinguishing the different counties in which they were given. They shall certify such statements to be correct, and subscribe the same with their proper names.

Sec. 25. They shall make and subscribe, on the proper statement, a certificate of their determination, and shall deliver the same to the Secretary of State.

Sec. 26. Upon such statements they shall then proceed to determine and declare, what persons have been, by the greatest number of votes, duly elected to such offices, or either of them. They shall have power, and it is made their duty, to decide all cases under protest or contest that may arise when the power to do so does not, by the Constitution, reside in some other body.

Of the Formation and Proceedings of the College of Electors.

Sec. 13. The electors of the President and Vice-President shall convene at the Capital, in some convenient

place, on the day preceding the first Wednesday in December after their election; and those of them who shall be so assembled at four o'clock in the afternoon of that day, shall, immediately after that hour, proceed to fill, by ballot, and by plurality of votes, all vacancies in the electoral college occasioned by the death, refusal to serve, or neglect to attend at that hour, of any elector, or occasioned by an equal number of votes having been given for two or more candidates.

SEC. 16. On the said first Wednesday in December, the electors shall meet at some convenient place at the Capital and then and there vote by ballot for President and Vice-President, one of whom at least shall not be an inhabitant of the same State with themselves. They shall name in their ballots the persons voted for as President, and, in distinct ballots, the persons voted for as Vice-President.

SEC. 17. They shall make distinct lists of all persons voted for as President and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify; and after annexing thereto one of the lists received from the Secretary of State, they shall seal up the same, certifying thereon that lists of the votes of the State for President and Vice-President are contained therein.

VERMONT.

One of the persons voted for as Republican elector was ineligible, being postmaster of the town of Bridgport.

The legislature passed a remedial act, but a Democratic elector, Sollace, claimed the vacant seat. The other electors denied his right, and filled the vacancy. Whereupon, Sollace formally protested, and took measures to present his claim and vote to Congress at the convention of the two Houses on the 2d Wednesday of February next.

General Statutes of Vermont. (1862.)

Sec. 63. The clerks and sheriffs,* as aforesaid, shall, within five days after counting said votes, give notice to the persons elected, who are hereby directed to meet at the State house in Montpelier on the day before the first Wednesday of December to vote for President and Vice-President of the United States, agreeably to the laws of the United States; and in case any person so elected an elector shall neglect to attend at the place aforesaid, on the day before the first Wednesday of December, as aforesaid, it shall be the duty of the other electors present to fill by ballot the vacancy thus occasioned.

Supplementary Law.

An Act in relation to Presidential Electors. (Nov. 17, 1876.)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. If there shall be any vacancy in the office of an elector for President or Vice-President of the United States at the time provided by law for the meeting and action of the electors, occasioned by death, refusal to act, neglect to attend, or in any other manner or for any other cause—the other electors present shall immediately fill, by *viva voce* and plurality of votes, such vacancy, in the electoral college; and when all the electors shall appear, or the vacancy therein shall have been filled, as before provided, such electors shall proceed—at the State house in Montpelier on the day appointed by law—to perform the duties required of them by the Constitution and laws of the United States; and if any such vacancy shall occur and shall be filled as aforesaid, the electors shall attach

*Clerks or sheriffs of towns are authorized by the preceding sections (62) to make a preliminary canvass of the votes cast and return the same to the Secretory of State for the State.

to the certificate of their votes a statement showing how such vacancy occurred and their action thereon.

SEC. 2. This act shall take effect from its passage.

VIRGINIA.

Case same as in Michigan and Oregon. Ineligibility of an elector (Holliday, Democratic,), and vacancy filled by the electors present.

CODE OF VIRGINIA. (1873.)

TITLE III, CHAP. V.

"SEC. 10. The electors shall convene at the capitol, in the city of Richmond, on the first Wednesday of December, after their election, at the hour of twelve o'clock at noon of that day; and if there be any vacancy in the office of electors, occasioned by death, refusal to act, neglect to attend, or other cause, the electors present shall immediately proceed to fill by ballot, and by plurality of votes, such vacancy in the electoral college; and when the electors shall appear, or the vacancies shall have been filled as above provided, they shall proceed to perform the duties required of such electors by the Constitution and laws of the United States."

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